

COMMONWEALTH OF PENNSYLVANIA



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September 3, 2021

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission  
v.  
Duquesne Light Company  
Docket No. R-2021-3024750

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Main Brief in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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Certificate of Service

\*316801

CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission :  
 :  
 v. : Docket No. R-2021-3024750  
 :  
 Duquesne Light Company :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Main Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 3<sup>rd</sup> day of September 2021.

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Dated: September 3, 2021  
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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :  
 :  
 v. : Docket No. R-2021-3024750  
 :  
 Duquesne Light Company :

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MAIN BRIEF  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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## **I. INTRODUCTION**

### **A. Background**

Duquesne Light Company (Duquesne or Company) proposed to increase its total annual operating revenues by \$85.8 million, or 15.6%, over the amount of annual distribution revenues at present rates. This net increase in base distribution revenues was calculated through an increase of approximately \$115 million in base rates, which is offset by reductions of \$29.2 million per year in other current charges, including the zeroing out of Duquesne's Distribution System Improvement Charge. The Company achieved this, in part, by proposing an increase to the residential customer charge from \$12.50 to \$16.00. As proposed in its filing, a residential customer using an average of 600 kWh per month would have seen their total bill increase on a monthly basis from \$100.12 per month to \$107.85 per month, or 7.72% on a total bill basis (distribution, transmission, and generation charges). The proposed rate increase, as filed, would have produced a 7.84% overall rate of return, including a 10.95% rate of return on common equity.

Pursuant to Section 1330 of the Public Utility Code, Supplement No. 25 also requested approval of the following alternative rate mechanisms: (1) Residential Subscription Rate; (2) a non-residential Community Development Rider; (3) Federal Tax Adjustment clause; and (4) Electric Vehicle Service. For the Residential Subscription Rate pilot, DLC proposed a residential customer pilot program to allow customers to select a specified level of grid access of distribution service for a set monthly charge. Duquesne also proposed to add a Federal Tax Adjustment clause rider to provide for adjustments to base rate distribution revenue to reflect the effects of future increases or decreases to the federal corporate income tax rate. For Electric Vehicle Service, Duquesne proposed a five year Electric Vehicle Home Charging Pilot to install, own, and maintain L2 stations for residential customers. Duquesne also proposed a Public, Workplace, and Multi-



Unit Dwelling Make-Ready Pilot (Make-Ready Pilot) and the Fleet Transit Charging Pilot.

Through the course of discovery, testimony, evidentiary hearings, and settlement negotiations, all but one issue raised by the Company's base rate filing have been resolved. The Office of Consumer Advocate (OCA) addresses a single contested issue in this Main Brief regarding Nationwide Energy Partners, LLC's (NEP) proposal to adopt a new master metering Tariff Rule 41.2 that allows for master metering and the redistribution of energy with conditions.

B. Burden of Proof

The Company bears the burden of proof to establish the justness and reasonableness of every element of its requested rate increase. In this regard, Section 315(a) of the Public Utility Code, 66 Pa. C.S. § 315 (a), provides as follows:

Reasonableness of rates – In any proceeding upon the motion of the Commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.<sup>1</sup>

The Commonwealth Court has interpreted this principle in stating that:

Section 315(a) of the Public Utility Code, 66 Pa. C.S. § 315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the utility. It is well-established that the evidence adduced by a utility to meet this burden must be substantial.<sup>2</sup>

The “term ‘burden of proof’ is comprised of two distinct burdens, the burden of production and the burden of persuasion.”<sup>3</sup> The burden of production dictates which party has the duty to

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<sup>1</sup> 66 Pa. C.S. § 315 (a).

<sup>2</sup> Lower Frederick Twp. V. Pa. Pub. Util. Comm'n, 409 A.2d 505, 507 (Pa. Commw. Ct. 1980) (citations omitted); see also Brockway Glass v. Pa. Pub. Util. Comm'n, 437 A.2d 1067 (Pa. Commw. Ct. 1981).

<sup>3</sup> Hurley v. Hurley, 754 A.2d 1283, 1285 (Pa. Super. 2000) (Hurley).

introduce enough evidence to support a cause of action.<sup>4</sup> The burden of persuasion determines which party has the duty to convince the finder-of-fact that a fact has been established.<sup>5</sup> “The burden of persuasion never leaves the party on whom it is originally cast.”<sup>6</sup>

The Pennsylvania Supreme Court has stated that the party with the burden of proof has a formidable task to show that the Commission may lawfully adopt its position. Even where a party has established a prima facie case, the party with the burden must establish “the elements of that cause of action to prevail, precluding all reasonable inferences to the contrary.”<sup>7</sup> Thus, a utility has an affirmative burden to establish the justness and reasonableness of every component of its rate request.

In Commission proceedings, the proponent of a rule or order bears the burden of proof with respect to the proposed rule. 66 Pa. C.S. § 332(a). NEP has proposed that Duquesne adopt a new master-metered tariff, Tariff Rule 41.2, that would allow for master metering and the redistribution of energy of energy with conditions. As the proponent of the rule, NEP has the burden to prove its allegations by a “preponderance of the evidence.”<sup>8</sup> Proving an allegation by a “preponderance of the evidence” means that one party has presented evidence, which is more convincing than the evidence presented by the other party.<sup>9</sup> The Pennsylvania Supreme Court stated further:

. . . The burden of proof must be by a preponderance of the evidence, which means when it is weighed there will be a perceptibly greater weight in favor of the plaintiff’s proof and more than a mere scintilla. . . . If we visualize evidence as

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<sup>4</sup> Id., at 1286.

<sup>5</sup> Id.

<sup>6</sup> Hurley at 1286; see also Pa. Pub. Util. Comm’n v Equitable Gas Co., Docket No. R-822133, *et al.*, 1983 Pa. PUC LEXIS 33 at \*126-127 (Pa. PUC Jul. 8, 1983) (Equitable Gas 1983).

<sup>7</sup> Burleson v. Pa. Pub. Util. Comm’n, 461 A.2d 1234, 1236 (Pa. 1983) (Burleson).

<sup>8</sup> 66 Pa. C.S. § 332(a). See also North American Coal Corp. v. Commonwealth of Pa., 2 Pa. Commw. 469, 279 A.2d 356 (1971).

<sup>9</sup> Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950) (Se-Ling).

something weighed in an ordinary balance scales and if the evidence plaintiff offers in support of his claim is so much more weighty in probative value than the evidence offered in opposition to it that it tips the scales on the side of the plaintiff, the latter has proved his claim by the fair weight of the evidence. . . .<sup>10</sup>

The OCA submits that the Company has met its burden of proof in this case as it is modified by the Joint Petition for Settlement. As the proponent of the proposed tariff provision, NEP has not met its burden as the proponent of Tariff Rule 41.2, and the NEP proposal should be denied.

## **II. STATEMENT OF THE CASE**

### **A. Parties**

On April 27, 2021, the OCA filed a Formal Complaint, Public Statement and Notice of Appearance. On April 23, 2021, the Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance, and the Office of Small Business Advocate (OSBA) filed a Formal Complaint, Public Statement and Notice of Appearance. The following parties filed Petitions to Intervene: the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); the Pennsylvania Weatherization Providers Task Force, Inc.; the Natural Resource Defense Council (NRDC); United States Steel Corporation (US Steel); Peoples Natural Gas Company, LLC; Nationwide Energy Partners (NEP); ChargePoint, Inc. (ChargePoint); and the International Brotherhood of Electrical Workers Local 120 (IBEW) filed a Petition to Intervene on June 14, 2021. Consumers, Sean Ferris, Jan K. Vroman, and Diane Buzzard filed Formal Complaints.

### **B. Proceeding**

On May 20, 2021, the Commission entered an Order suspending Supplement No. 25 until January 15, 2022, pursuant to Section 1308(d) of the Public Utility Code, 66 Pa. C.S. Section

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<sup>10</sup> Se-Ling, 364 Pa. at 48, 70 A.2d at 855-56.

1308(d), and initiated an investigation into the lawfulness, justness, and reasonableness of the proposed and existing rates, rules, and regulations. The Company's filing was assigned to Administrative Law Judges (ALJs) Joel H. Cheskis and John M. Coogan. On April 27, 2021, Duquesne filed its Motion for Protective Order, and a Protective Order was issued on June 2, 2021. A Prehearing Conference Order was issued on May 20, 2021. A Prehearing Conference was held on May 27, 2021. A Scheduling Order was issued on May 28, 2021.

Virtual Public Input Hearings were held on June 22, 2021 at 1:00 p.m. and 6:00 p.m.

On June 2, 2021, NEP filed a Motion to Consolidate its Formal Complaint with the base rate proceeding docket. On June 4, 2021, Duquesne filed an Answer and Preliminary Objections to NEP's Formal Complaint. In its Preliminary Objections, Duquesne argued that NEP lacked standing and requested that NEP be denied party status. NEP filed its Answer on June 9, 2021. On June 25, 2021, the ALJs issued their Order Denying Preliminary Objection Filed by Duquesne Light Company Against Nationwide Energy Partners, LLC and Granting Motion to Consolidate.

On June 30, 2021, the OCA submitted the Direct Testimony of its witnesses: Lafayette K. Morgan, Jr., OCA Statement No. 1;<sup>11</sup> David J. Garrett, OCA Statement No. 2;<sup>12</sup> Glenn A. Watkins,

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<sup>11</sup> Mr. Morgan is an independent regulatory consultant focusing in the analysis of public utility operations, with an emphasis on rate regulation. He has reviewed and analyzed utility rate filings, focusing on revenue requirements, accounting, regulatory policy and cost recovery mechanisms throughout the country. OCA St. 1, App. A.

<sup>12</sup> Mr. Garrett is the President of Resolve Utility Consulting., a consulting firm specializing in public utility regulation and litigation. Mr. Garrett is a licensed attorney and a certified public accountant, primarily working as a consultant in public utility regulation. Mr. Garrett's complete qualifications are listed in OCA Statement 2, Appendix A.

OCA Statement No. 3;<sup>13</sup> Roger D. Colton, OCA Statement No. 4;<sup>14</sup> Noah D. Eastman, OCA Statement No. 5;<sup>15</sup> and Ron Nelson, OCA Statement No. 6.<sup>16</sup> The following parties also submitted Direct Testimony: I&E, OSBA, CAUSE-PA, ChargePoint, NEP, NRDC, and the Pennsylvania Weatherization Task Force. On July 26, 2021, the OCA filed the Rebuttal Testimony of Glenn A. Watkins, OCA Statement No. 3-R and Roger D. Colton, OCA Statement No. 4-R. The following parties also submitted Rebuttal Testimony: Duquesne; CAUSE-PA; ChargePoint; I&E; NRDC; and OSBA. On, the OCA submitted the Surrebuttal Testimony of: Lafayette K. Morgan, Jr., OCA Statement No. 1-SR; David J. Garrett, OCA Statement No. 2-SR; Glenn A. Watkins, OCA Statement No. 3-SR; Roger D. Colton, OCA Statement No. 4-SR; Noah D. Eastman, OCA Statement No. 5-SR; and Ron Nelson, OCA Statement No. 6-SR. The following parties also submitted Surrebuttal Testimony: Duquesne; CAUSE-PA; I&E; NEP; NRDC and OSBA. On August 13, 2021, Duquesne filed Rejoinder Testimony. NEP also filed a Rejoinder Testimony Outline but did not present Oral Rejoinder or request that the outline be admitted into evidence pursuant to the Joint Stipulation of Duquesne and NEP.

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<sup>13</sup> Mr. Watkins is a Principal and Senior Economist with Technical Associates, Inc., an economics and financial consulting firm. Mr. Watkins has conducted marginal and embedded cost of service, rate design, cost of capital, revenue requirement, and load forecasting studies involving numerous electric, gas, water/wastewater, and telephone utilities. A more complete description of Mr. Watkins' education and experience is provided in OCA Statement 3, Sch. GAW-1.

<sup>14</sup> Mr. Colton is a Principal of Fisher Sheehan & Colton, Public Finance and General Economics in Belmont, Massachusetts. He provides technical assistance to public utilities and primarily works on low income utility issues. Mr. Colton has devoted his professional career to helping public utilities, community-based organizations and state and local governments design, implement and evaluate energy assistance programs to help low income households better afford their home energy bills. A more complete description of Mr. Colton's education and experience is provided in OCA St. 4, App. A.

<sup>15</sup> Mr. Eastman received his Bachelor of Science in Economics from Shippensburg University and is employed by the OCA as a Regulatory Analyst. His responsibilities include financial, economic and business operations analysis of utility filings. Mr. Eastman's qualifications are attached as Appendix A to OCA Statement 5.

<sup>16</sup> Mr. Nelson is a Director with Strategen Consulting and has worked with numerous consumer advocates on issues related to cost of service modeling, rate design, grid modernization, DER valuation and integration, and performance-based regulation. OCA St. 1 at 1. Mr. Nelson's resume is attached to his Direct Testimony. See OCA St. 6, Sch. REN-1.

All parties waived cross-examination, and on August 17, 2021, an Evidentiary Hearing was held for the purposes of admitting testimony. At the hearing, Duquesne, NEP, and CAUSE-PA admitted their respective Joint Stipulations into evidence. The parties informed the ALJs that a settlement in principle had been reached on all issues except the NEP proposed Tariff Rule 41.2.

On August 17, 2021, the ALJs issued their Briefing Order. Pursuant to the Briefing Order, the Office of Consumer Advocate files this Main Brief.

C. Partial Settlement

On September 3, 2021, the parties will file a Joint Petition for Approval of Settlement (Settlement), including Statements in Support, on all issues except the instant issue reserved for litigation. NEP has not joined the Settlement, but otherwise does not oppose the Settlement. The OCA now submits this Main Brief which addresses the single remaining contested issue: whether NEP's proposed Tariff Rule 18.8 should be approved.

**III. SUMMARY OF THE ARGUMENT**

In this proceeding, NEP proposes to add a new master-metered Tariff Rule 41.2 that would allow for master metering and the redistribution of energy of energy with conditions. The OCA submits that the proposal would potentially eliminate important basic consumer protections available under the Public Utility Code for residential customers because they would no longer be considered utility customers under the Public Utility Code. In addition, low-income customers would not have access to the affordable bills provided by the statutorily-mandated universal service programs by virtue of not being a utility customer of Duquesne. The OCA submits that NEP's proposed Tariff Rule 41.2 should be denied.

OSBA has proposed that if Tariff Rule 41.2 is adopted, the costs should be allocated to residential customers, and not commercial customers. The OCA submits that if Tariff Rule 41.2

is approved, any costs should only be allocated to commercial customers. OSBA's proposal to allocate the costs of master-metered multi-family buildings should be denied.

Therefore, the OCA respectfully requests that the Commission reject NEP's proposed tariff rule modification and approve the September 3, 2021 Joint Petition for Approval of Settlement without modification.

#### **IV. ARGUMENT**

##### **A. Overview of NEP Proposal**

In its Direct Testimony, NEP proposes that Duquesne adopt a new master metering tariff that allows for master metering and the redistribution of energy with conditions. NEP St. 1 at 4. OCA witness Colton summarized the proposed conditions as follows:

- Master metering will be allowed for non-low income new and existing multifamily properties.
- Submetering must be AMI or other advanced revenue metering;
- Technologies must be provided with billing to allow tenants access to their usage and optional controls to receive a credit based on conservation actions.
- Redistribution of energy costs may never exceed the total bill a customer would have received for the same amount of usage for the tariffs in effect for the same time period consistent with Section 1313 of the Public Utility Code.

OCA St. 1-R at 6; NEP St. 1 at 24.

In her Surrebuttal Testimony, NEP witness Ringenbach stated that she revised the proposal to address the issues raised by Duquesne, CAUSE-PA, and OCA. NEP St. 1-SR at 14-16 (Public Version). Ms. Ringenbach proposed that NEP's master and submetering program would be limited to 130 existing developments and new buildings with requests to convert existing buildings treated on a first come, first service basis and a mandatory minimum \$2 per tenant bill credit regardless

of income or usage to ensure that tenants receive a benefit. NEP St. 1-SR at 14-15 (Public Version).

In order to address bill collection differences with Duquesne, Ms. Ringenbach proposed to match the following to Duquesne's tariff and the PUC regulations: (1) "number of days due from bill issue date including number of days grace period;" (2) "any past due or collection recovery fees may not exceed the collection recovery fees of the utility based on the tariff requirements in effect for the month the bill to collect such costs is issued;" (3) "meter testing fees and testing request requirements will match the applicable time to test and fee recovery amounts applicable; and (4) "notices of disconnection must match the number and type of notices provided by the rules, regulations and statutes applicable to Duquesne." Id. at 14-15. NEP also provides that "a payment plan option must be made available to tenants having trouble paying their bills, but such plan shall not [sic] greater than the lesser of (i) 12 months or (ii) the remaining term of the tenant's lease." NEP St. 1-SR at 14 (Public Version).

NEP proposes that tenants will be informed prior to signing the lease that the lease will involve submetering electric service; certain low-income programs will not be available to tenants; the property owner has chosen a competitive supplier on their behalf, including an explanation of emissions and environmental attributes of the supply; and an explanation of how the bill has been calculated and the technologies provided under Tariff Rule 41.2 such as smart thermostats, smart energy control devices and EV charging. Id. at 16

Finally, NEP proposes that EV charging or "other technologies chosen by the property owner" may not be separately billed to the tenant, or otherwise treated as a separate line item of usage. NEP stated that they are also "subject to the total bill cap amount less \$2 credit to qualify for Tariff Rule 41.2." Id.



For the reasons set forth below, the OCA submits that the proposed conditions are not sufficient to address the broad scope of consumer protection issues raised by the OCA, Duquesne, and CAUSE-PA witnesses.

B. NEP's Proposed Tariff Rule 41.2 Should be Denied.

Since 1981, sub-metering in new master-metered apartment complexes have not been permitted under Tariff Rules 18 and 41 pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA). Duquesne St. 6-R at 5-6; CAUSE-PA St. 1-R at 5-6; see also, NEP St. 1 at 4.<sup>17</sup> Tariff Rule 18 specifically prohibits the redistribution of electricity. CAUSE-PA St. 1-R at 5. Duquesne, the OCA, and CAUSE-PA oppose NEP's proposal to amend the tariff. See, Duquesne St. 6-R at 1-27; Duquesne St. 6-SR at 1-5; Duquesne St. 6-RJ at 1-3; OCA St. 1-R at 6-8; CAUSE-PA St. 1-R. The OCA notes that OSBA witness Knecht also opposes the proposal. OSBA St. 1-R at 23. The OCA submits that NEP's proposal should be denied.

NEP's Tariff Rule 41.2 proposal and the subsequent Surrebuttal revisions to its proposal do not address the core concerns presented by the OCA in this case, particularly with respect to low-income customers. Under Chapter 56 of the Commission's regulations and Chapter 14 of the Public Utility Code, residential utility customers are provided with important protections under the law related to customer billing and payment, credit and deposit provisions, terminations, medical certifications, and protections for victims of domestic violence that serve to protect and preserve essential utility service for residential customers.<sup>18</sup> NEP's proposed Tariff Rule 41.2

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<sup>17</sup> The OCA notes that Duquesne witness Phillips identified the Company's withdrawal of the proposed revisions to Tariff Rule 41 and the new Tariff Rule 41.1. Duquesne St. 6-SR at 3. As Company witness Phillips notes, the Tariff Rule 41 revisions and the new Tariff Rule 41.1 also related to allowing master-metered properties in the service territory. Id.

<sup>18</sup> See, 52 Pa. Code § 56.1, et seq.; 66 Pa. C.S. § 1401, et seq.

would potentially remove those protections because tenants may not be considered customers of the utility, subject to those protections under the law.

The OCA submits that NEP's proposal is also not consistent with Section 1313 of the Public Utility Code.<sup>19</sup> Section 1313 of the Public Utility Code provides:

Whenever any person, corporation or other entity, not a public utility, electric cooperative corporation, municipality, authority or municipal corporation, purchases service from a public utility and resells it to consumers, the bill rendered by the reseller to any residential consumer shall not exceed the amount which the public utility would bill its own residential consumers for the same quantity of service under the residential rate of its tariff then currently in effect.<sup>20</sup>

Section 1313 protects consumers by requiring that public utility service is not resold above tariffed rates that have been found to be "just and reasonable" through their approval by the Commission.<sup>21</sup>

Under NEP's proposal, NEP cannot ensure that the requirements of Section 1313 of the Public Utility Code will be met. In particular, low-income customers would be particularly impacted by the difference between being served by Duquesne as opposed to NEP. See, OCA St. 4-R at 6-8. While NEP argues that the redistribution of energy costs will never exceed the total bill a customer would have received the same amount of usage, NEP cannot provide this guarantee with respect to low-income customers. NEP St. 1-SR at 2 (Public Version). Under NEP's proposal, low-income tenants or tenants experiencing payment difficulties would not have the same rights and protections as individually-metered Duquesne customers. Id. As master-metered customers, low-income tenants would not be eligible to enroll in Duquesne's CAP program to receive the discounted rate available to all other similarly situated low-income customers.

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<sup>19</sup> 66 Pa. C.S. § 1313.

<sup>20</sup> 66 Pa. C.S. § 1313.

<sup>21</sup> 66 Pa. C.S. § 1313.

NEP argues that it is not and should be held to the standards of a public utility. NEP St. 1-SR at 2-3 (Public Version). While NEP is not a public utility certificated by the Public Utility Commission, Section 1313 of the Public Utility Code, however, specifically brings resellers of electricity under the jurisdiction of the Public Utility Commission.<sup>22</sup> The OCA submits that, under its proposal, NEP will stand in the place of the public utility by reselling electricity to its tenants, and as such, its tenants will lose certain protections that they would otherwise have as utility customers.

OCA witness Colton reviewed NEP's proposal and identified several consumer protection concerns with the proposal. NEP's revised proposal fails to address these concerns. The OCA primary concern is that the NEP proposal would eliminate access to statutorily-mandated, low-income customer protections provided to residential utility customers. As Mr. Colton testified:

First, for years, the Pennsylvania PUC, natural gas and electric distribution utilities, and other stakeholders have been seeking to ensure the provision of affordable service to low-income customers. Those efforts have resulted in a suite of universal service programs offered to income-qualified customers. NEP has not explained how its provision of service is consistent with these universal service efforts. For example, NEP has not proposed any standards by which to measure whether someone is "low-income" or not. I have concerns about how NEP would identify and respond to changes in income. We know from Pennsylvania's universal service efforts that incomes may vary within a year. That is one reason that the Commission allows for the use of annualized income (e.g., 30-day or 90-day income annualized to 12-months) to establish eligibility for universal service programs (e.g., hardship fund) and customer protections (e.g., winter shutoff protections). NEP does not address what happens to a tenant if or when that tenant's income changes. I have concerns about the adoption of a tariff with such a fundamental aspect undefined.

OCA St. 4-R at 6-7.

As OCA witness Colton discussed, NEP's proposal fails to address the potential that tenants may experience unexpected financial hardships. NEP's proposed revision in its Surrebuttal

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<sup>22</sup> 66 Pa. C.S. § 1313.

Testimony to provide tenants with information in advance of signing the lease states that customers does not address the problem. NEP St. 1-SR at 16 (Public Version). The information provided prior to signing the lease will not help the consumer if that consumer has a change in income such that he or she can no longer afford utility service. See related, OCA St. 4-R at 6-7.

Tariff Rule 41.2 would also potentially eliminate important consumer protections currently provided for under the law in Duquesne's service territory for residential customers.<sup>23</sup> OCA witness Colton expressed a concern regarding how those protections might be provided under the proposed Tariff Rule 41.2. As Mr. Colton testified:

... I have a concern how, if at all, basic consumer protections will be provided. For example, in my Direct Testimony, I identify a population of customers whose income is not sufficiently low to qualify a customer for universal service programs, but not sufficiently high to allow the customer to sustainably pay their electric bill over time. For such customers, protections such as reasonable payment plans are an important part of providing electric service. It is not clear how any or all of the Commission's consumer protections would be extended to tenants whose service is subject to the tariff as proposed by NEP.

OCA St. 4-R at 7. In Rebuttal Testimony, CAUSE-PA witness Geller identified similar concerns and specifically discussed each of the provisions of Chapter 14 that could be impacted. See, CAUSE-PA St. 1-R at 15-40.

Finally, OCA witness Colton identified a concern about the extent to which the Commission's residential consumer protections would extend to service billed pursuant to a non-residential rate. OCA witness Colton testified:

... I have a concern about the extent to which, if at all, the Commission's consumer protections applicable to residential customers would extend to service that is being billed pursuant to a non-residential rate. No recognition has been given to this lack of clarity about basic consumer protections designed to ensure fair treatment of Pennsylvania households and a reasonable assurance of ongoing access to essential utility services.

OCA St. 4-R at 7-8.

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<sup>23</sup> See, 52 Pa. Code § 56.1, et seq.; 66 Pa. C.S. § 1401, et seq.

In its Surrebuttal Testimony, NEP argues that “tenants behind master metered buildings are not utility customers and should not be treated as such as addressing what the various parties characterize as “customer protections.” NEP St. 1-SR at 4 (Public Version). The OCA submits that this is precisely the concern. For example, NEP proposes in its Surrebuttal Testimony that tenants would be provided with a payment arrangement that NEP also provides that “but such plan shall not [sic] greater than the lesser of (i) 12 months or (ii) the remaining term of the tenant’s lease.” NEP St. 1-SR at 14 (Public Version). The OCA submits that this payment arrangement length may be significantly shorter than the timeframe provided for under Chapter 14. Under Section 1405 of the Public Utility Code, a low-income customer at or below 250% of the Federal Poverty Level is eligible for longer payment arrangement. Section 1405 provides for a payment arrangement of three years for customers with income from 151%-250% of the Federal Poverty Level or five years for customers with income below 150% of the Federal Poverty Level.<sup>24</sup>

Duquesne witness Phillips also identified concerns with the Company’s revised Surrebuttal Testimony proposal. As Ms. Phillips testified, “NEP’s updated proposal retains many of the shortcomings in its initial proposal, including but not limited to customer assistance programs, electric supply shopping programs, customer/tenant due process, and other customer protections.” Duquesne St. 6-RJ at 2. The OCA agrees with Duquesne that the proposed revisions do not address the consumer protection concerns raised by NEP’s proposal.

The OCA submits that that NEP’s modifications to its proposal in Surrebuttal Testimony do not address these basic consumer protection concerns. For the reasons set forth above, the OCA submits that NEP’s proposed Tariff Rule 41.2 should be denied.

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<sup>24</sup> 66 Pa. C.S. §1405(b)(1),(2).

C. OSBA's Proposal to Allocate the Costs of Master Metered Multifamily Service to Residential Customers Should be Denied.

OSBA witness Knecht states that if the master-metered programs proposed in this case are approved and billed under commercial rates, there will be a negative impact on other medium and larger general service customers due to his belief that these customers will have better load factors than master-metered facilities. OSBA St. 1-R at 23. OSBA witness Mr. Knecht argues that if master-metered multifamily service is approved under Tariff Rule 41.2 that the costs should be included as a part of the residential class costs for cost allocation and revenue allocation purposes. OSBA St. 1-R at 23. Mr. Knecht also recommends the creation of a sub-class of master-metered multifamily customers within the Rate RS class. OSBA St. 1-R at 23.

The OCA submits that the costs of any master-metered multi-family service should not be allocated to residential customers. OSBA witness Knecht's proposal errs in two respects. First, the impact on the commercial class is unknown at this time, and therefore, speculative. OCA St. 3-SR at 14. As OCA witness Glenn Watkins testified:

There are many factors that would need to be considered in evaluating any differences in the load shapes and load factors between master-metered multi-family housing facilities and all other medium and large general customers. These factors would include the additional diversities of demand with multiple energy users within the same building, demand-side management programs that would be available to master metered facilities, and the centralization of heating and cooling facilities.

In these regards, in the District of Columbia, PEPCO offers a separate master metered apartment building rate. While I do not know whether PEPCO's rates in the District are reasonably cost-based, the distribution rates for Master Metered Apartments (Rate Schedule MMA) are lower than the General Service Commercial rate (Rate Schedule GS-ND) but are lower than the General Service Commercial rate (Rate Schedule GS-ND) but are somewhat higher than the traditional residential rate (Rate Schedule R).

OCA St. 3-SR at 14, Sch. GAW-1SR (PEPCO rate schedule).

Second, the facilities are clearly commercial customers, and not residential customers, and the costs should not be allocated to residential customers. As OCA witness Watkins testified:

Master metered multi-family facilities are indeed commercial customers. That is, these facilities (whether low income or not) are owned by commercial investors and/or quasi-governmental agencies. As such, these facilities should continue to be treated as commercial customers. Furthermore, if one were to accept Mr. Knecht's logic, then commercial nursing homes, assisted housing facilities and hotels should also be treated as "residential" for cost allocation purposes. Clearly, such treatments are at odds with accepted industry practices.

OCA St. 3-SR at 15.

For the reasons set forth above and in OCA witness Watkins testimony, it is not appropriate to allocate commercial facility costs to residential customers because residential consumers occupy the building. The OCA submits that if the proposal for Tariff Rule 41.2 is approved, any costs should only be allocated to commercial customers. OSBA's proposal to allocate the costs of master-metered multi-family buildings should be denied.

## V. CONCLUSION

For the reasons set forth in this Main Brief, the Office of Consumer Advocate respectfully requests that National Energy Partners' proposal to adopt a new master metering tariff, Tariff Rider 41.2, be denied and that the Joint Petition for Settlement be approved without modification.

Respectfully Submitted,

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## **APPENDIX A            PROPOSED FINDINGS OF FACT**

1.        Since 1981, sub-metering in new master-metered apartment complexes have not been permitted under Tariff Rules 18 and 41 pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA). Duquesne St. 6-R at 5-6; CAUSE-PA St. 1-R at 5-6.
2.        Duquesne witness Phillips withdrew proposed revisions to Tariff Rule 41 and new Tariff Rule 41.1. Duquesne St. 6-SR at 3.
3.        NEP proposes Tariff Rule 41.2 to allow for submetering for master-metered properties and the redistribution of energy. OCA St. 1-R at 6; Nationwide Energy Partners St. 1 at 24.
4.        NEP proposes that master metering will be allowed for non-low income new and existing multifamily properties. OCA St. 1-R at 6; Nationwide Energy Partners St. 1 at 24.
5.        NEP proposes that submetering must be AMI or other advanced revenue metering. OCA St. 1-R at 6; Nationwide Energy Partners St. 1 at 24.
6.        NEP proposes that technologies must be provided with billing to allow tenants access to their usage and optional controls to receive a credit based on conservation actions. OCA St. 1-R at 6; Nationwide Energy Partners St. 1 at 24.
7.        NEP witness Ringenbach proposed that NEP’s master and submetering program would be limited to 130 existing developments and new buildings with requests to convert existing buildings treated on a first come, first service basis and a mandatory minimum \$2 per tenant bill credit regardless of income or usage to ensure that tenants receive a benefit. NEP St. 1-SR at 14-15 (Public Version).
8.        NEP witness Ringenbach proposed to match the following to Duquesne’s tariff and the PUC regulations: (1) “number of days due from bill issue date including number of days grace period;” (2) “any past due or collection recovery fees may not exceed the collection recovery fees of the utility based on the tariff requirements in effect for the month the bill to collect such costs is issued;” (3) “meter testing fees and testing request requirements will match the applicable time to test and fee recovery amounts applicable; and (4) “notices of disconnection must match the number and type of notices provided by the rules, regulations and statutes applicable to Duquesne.” NEP St. 1-SR at 14-15 (Public Version).
9.        NEP also proposes that “a payment plan option must be made available to tenants having trouble paying their bills, but such plan shall not [sic] greater than the lesser of (i) 12 months or (ii) the remaining term of the tenant’s lease.” NEP St. 1-SR at 14 (Public Version).
10.      NEP also proposes that tenants will be informed prior to signing the lease that the lease will involve submetering electric service; certain low-income programs will not be available to tenants; the property owner has chosen a competitive supplier on their behalf, including an explanation of emissions and environmental attributes of the supply; and an explanation of how

the bill has been calculated and the technologies provided under Tariff Rule 41.2 such as smart thermostats, smart energy control devices and EV charging). NEP St. 1-SR at 16 (Public Version).

11. NEP proposes that EV charging or “other technologies chosen by the property owner” may not be separately billed to the tenant, or otherwise treated as a separate line item of usage. NEP stated that they are also “subject to the total bill cap amount less \$2 credit to qualify for Tariff Rule 41.2. NEP St. 1-SR at 16 (Public Version).

12. Under submetering, tenants may not be considered utility customers. OCA St. 4-R at 6-8

13. Tariff Rule 41.2 would potentially eliminate important consumer protections currently provided for under the law in Duquesne’s service territory for residential customers. OCA St. 4-R at 6-8; 52 Pa. Code § 56.1, et seq.; 66 Pa. C.S. § 1401, et seq.

14. In Rebuttal Testimony, CAUSE-PA witness Geller identified similar concerns and specifically discussed each of the provisions of Chapter 14 that could be impacted. See, CAUSE-PA St. 1-R at 15-40.

15. For years, the Pennsylvania PUC, natural gas and electric distribution utilities, and other stakeholders have been seeking to ensure the provision of affordable service to low-income customers. OCA St. 4-R at 6-7.

16. Those efforts have resulted in a suite of universal service programs offered to income-qualified customers. OCA St. 4-R at 6-7.

17. NEP has not explained how its provision of service is consistent with these universal service efforts. OCA St. 4-R at 6-7.

18. For example, NEP has not proposed any standards by which to measure whether someone is “low-income” or not. OCA St. 4-R at 6-7.

19. NEP has not identified how it would identify and respond to changes in income.

20. Incomes may vary within a year. OCA St. 4-R at 6-7.

21. The Commission allows for the use of annualized income (e.g., 30-day or 90-day income annualized to 12-months) to establish eligibility for universal service programs (e.g., hardship fund) and customer protections (e.g., winter shutoff protections). OCA St. 4-R at 6-7.

22. NEP does not address what happens to a tenant if or when that tenant’s income changes. Master-metered customers are commercial customers. OCA St. 3-SR at 15.

23. The costs of any master-metered multi-family service should not be allocated to residential customers. OCA St. 3-SR at 15.

24. The impact on the commercial class is unknown at this time, and therefore, speculative. OCA St. 3-SR at 14.
25. There are many factors that would need to be considered in evaluating any differences in the load shapes and load factors between master-metered multi-family housing facilities and all other medium and large general customers. OCA St. 3-SR at 14.
26. These factors would include the additional diversities of demand with multiple energy users within the same building, demand-side management programs that would be available to master metered facilities, and the centralization of heating and cooling facilities. OCA St. 3-SR at 14.
27. Master-metered multi-family facilities are indeed commercial customers. OCA St. 3-SR at 15.
28. Master-metered facilities (whether low income or not) are owned by commercial investors and/or quasi-governmental agencies. OCA St. 3-SR at 15.
29. As such, master-metered facilities should continue to be treated as commercial customers. OCA St. 3-SR at 15.
30. If one were to accept Mr. Knecht's logic, then commercial nursing homes, assisted housing facilities and hotels should also be treated as "residential" for cost allocation purposes. OCA St. 3-SR at 15.

## APPENDIX B            PROPOSED CONCLUSIONS OF LAW

1.        A public utility seeking a rate increase has the burden of proof to establish the justness and reasonableness of each element of its request. 66 Pa. C.S. § 315(a).

2.        The utility requesting the rate increase has the burden of proving that the rate involved is just and reasonable. 66 Pa. C.S. §§ 315(a), 1301, and 1308(e).

3.        PECO has met its burden of proof and demonstrated that the costs at issue are direct costs and are appropriately assigned to distribution service.

4.        NEP's proposal is not consistent with Section 1313 of the Public Utility Code. 66 Pa. C.S. § 1313.

5.        Section 1313 of the Public Utility Code, however, specifically brings resellers of electricity under the jurisdiction of the Public Utility Commission. 66 Pa. C.S. § 1313.

6.        Redistribution of energy costs may never exceed the total bill a customer would have received for the same amount of usage for the tariffs in effect for the same time period consistent with Section 1313 of the Public Utility Code. 66 Pa. C.S. § 1313; OCA St. 1-R at 6; Nationwide Energy Partners St. 1 at 24.

7.        Tariff Rule 41.2 would potentially eliminate important consumer protections currently provided for under the law in Duquesne's service territory for residential customers. See, 52 Pa. Code § 56.1, et seq.; 66 Pa. C.S. § 1401, et seq.

8.        Section 1405 of the Public Utility Code provides for a payment arrangement of three years for customers with income from 151%-250% of the Federal Poverty Level or five years for customers with income below 150% of the Federal Poverty Level. 66 Pa. C.S. §1405(b)(1),(2).

**APPENDIX C            PROPOSED ORDERING PARAGRAPHS**

It is hereby ORDERED that:

1.        Nationwide Energy Partners, LLC’s proposal to adopt a new master metering tariff, Tariff Rule 41.2, is denied.
  
2.        The Office of Small Business Advocate’s proposal to allocate the costs under Tariff Rule 41.2 to residential customers is improper, is mooted by the denial of Tariff Rule 41.2, and is otherwise denied.
  
3.        The September 3, 2021 Joint Petition for Approval of Settlement is approved without modification.
  
4.        Duquesne Light Company shall be permitted to file tariffs, tariff supplements or tariff revisions containing proposed rates, rules and regulations to increase annual revenues consistent with the Joint Petition for Partial Settlement and this Commission’s Opinion and Order.
  
5.        Duquesne Light Company’s tariffs, tariff Supplements or tariff revisions may be filed on less than statutory notice, and pursuant to the provisions of 52 Pa. Code §§ 53.31 and 53.101, may be filed to be effective on at least one day’s notice after entry of the Commission’s Final Order, for service rendered on and after the date of entry of the Commission’s Final Order in this matter.
  
6.        The Complaints filed by the various parties to this proceeding at Docket No. R-2021- are granted in part and denied in part, to the extent consistent with this Commission’s Opinion and Order.
  
7.        Upon acceptance and approval by the Commission of the tariff supplements and proof of revenues filed by Duquesne Light Company consistent with this Order, this proceeding shall be marked closed.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Joel H. Cheskis  
Deputy Chief Administrative Law Judge

\_\_\_\_\_  
John M. Coogan  
Administrative Law Judge